

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PATRICK MCCRACKEN,	:	CIVIL ACTION NO. 3:19-CV-1063
Administrator of the Estate of	:	
JEFFREY ALLEN MCCRACKEN,	:	(Chief Judge Conner)
:		
Plaintiff	:	
:		
v.	:	
:		
FULTON COUNTY, et al.,	:	
:		
Defendants	:	

ORDER

AND NOW, this 28th day of May, 2020, upon consideration of defendants' motions (Docs. 23, 25, 32, 33, 45) to dismiss plaintiff's amended complaint (Doc. 17) pursuant to Federal Rule of Civil Procedure 12(b)(6), and the report (Doc. 51) of Magistrate Judge Karoline Mehalchick recommending that the court grant in part and deny in part those motions, and further upon consideration of the objections (Docs. 52, 54, 55, 56) to the report as well as the parties' attendant briefing, (Docs. 53, 57, 59, 61, 62, 63, 64, 65), and for the reasons set forth in the accompanying memorandum of today's date, it is hereby ORDERED that:

1. The report (Doc. 51) of Judge Mehalchick is adopted in part and rejected in part as set forth in the accompanying memorandum.
2. The motions (Doc. 23, 25, 45) to dismiss by the medical defendants, the Fulton County defendants, and Constable Norman Sheffield are GRANTED to the extent the court concludes that the amended complaint fails to state any claim against these defendants. All counts of the amended complaint are DISMISSED without prejudice as to defendants PrimeCare Medical, Inc.; Doctor John Doe; Debra Slick, RN; Liana Altemus, RN; Katherine Barrett, RN; Todd Haskins; John/Jane Doe #1-5; Fulton County; Fulton County Commissioners Stuart Ulsh, Rodney L. McCray, and Larry R. Lynch; Sheriff Keith

Stains; the five Fulton County John Doe deputy sheriffs; and Constable Norman Sheffield.

3. The motion (Doc. 32) to dismiss by the Pennsylvania State Police defendants is GRANTED to the extent the court concludes that these defendants are entitled to sovereign immunity as to the state-law claims asserted against them. Counts VII and VIII of the amended complaint are DISMISSED with prejudice as to the Pennsylvania State Police defendants.
4. The motion (Doc. 33) to dismiss by the Bedford County defendants is GRANTED to the extent the court concludes that the amended complaint fails to state a claim against defendants Bedford County, Sheriff Charwin Reichelderfer, and the five Bedford County John Doe deputy sheriffs involved in plaintiff's transport. Counts I, III, V, VII, and VIII of the amended complaint are DISMISSED without prejudice as to these defendants to the extent they concern plaintiff's transport.
5. The motions (Docs. 25, 33, 45) to dismiss are also GRANTED to the extent plaintiff's request for punitive damages is DISMISSED as to all defendants on Count VII and as to the municipal defendants on all counts and are further GRANTED to the extent the allegations of joint and several liability are STRICKEN for lack of support.
6. The balance of the motion (Doc. 33) to dismiss by the Bedford County defendants is DENIED.
7. Plaintiff is granted leave to amend his complaint in accordance with the accompanying memorandum within 21 days of the date of this order. In the absence of a timely filed amended complaint, this matter shall proceed on the following counts:
 - a. Count I as to Correctional Officer Darrell Holliday, the five John Doe correctional officers, and the Pennsylvania State Police defendants only;
 - b. Count III as to the Pennsylvania State Police defendants only;
 - c. Count IV;

- d. Count V as to Bedford County, Warden Troy Nelson, and Pennsylvania State Police Commissioner Robert Evanchick only; and
- e. Counts VII and VIII as to Bedford County, Warden Troy Nelson, Correctional Officer Darrell Holliday, and the five John Doe correctional officers only.

8. Defendants' deadline to respond to the amended complaint under Federal Rule of Civil Procedure 12(a)(4)(A) is DEFERRED for the duration of the 21-day amendment period set forth in paragraph 7 above.
9. This matter is REMANDED to Magistrate Judge Mehachick for further pretrial management.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania